

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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UNPUBLISHED  
October 21, 2010

In the Matter of M. RECTOR, Minor.

No. 296801  
Kent Circuit Court  
Family Division  
LC No. 09-053349-NA

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Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Respondent-appellant J. Estrada appeals as of right the trial court order terminating her parental rights to the minor child, M. Rector.<sup>1</sup> We affirm.

**I. BASIC FACTS**

Thirty-one-year-old J. Estrada was incarcerated in June 2009, on charges of uttering and publishing, and perjury. She gave birth to M. Rector on September 19, 2009, while imprisoned and awaiting sentencing.

J. Estrada had a protective services history involving three children other than M. Rector. Her parental rights to two of the children were involuntarily terminated in November 2001. In January 2003, she gave birth to M. Beene, who was placed under a guardianship with his maternal great aunt in March 2007.

J. Estrada had a 14-year criminal history, including attempted felony breaking and entering a vehicle to steal property over \$5 in 1995, felony false pretenses in 1997, misdemeanor controlled substances and maintaining a drug house in 1997, felony prison escape in 1998, felony controlled substance/possession of cocaine less than 25 grams and felony furnishing contraband to prisoners in 2004, felony controlled substance/delivery or manufacturing less than 50 grams in 2007, and uttering and publishing and perjury in 2009.

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<sup>1</sup> MCL 712A.19b(3)(g) (failure to provide proper care or custody) and (l) (parental rights to another child were terminated). The trial court also terminated the parental rights of M. Rector's father, J. Rector, but he has not appealed that order and is not a party to this appeal.

On September 22, 2009, Kent County Department of Human Services (DHS) filed an original petition requesting termination of J. Estrada's parental rights to newborn M. Rector, alleging her previous terminations, M. Beene's guardianship, her failure to comply in 2008 with a reintegration plan to gain M. Beene's custody, her marijuana use in December 2008 or January 2009, her criminal history, and her current incarceration. The trial court authorized the petition and ordered M. Rector placed in foster care.

In October 2009, the trial court sentenced J. Estrada, as a fourth habitual offender, to serve a minimum five years and maximum 30 years for the 2009 convictions of uttering and publishing, and perjury, resulting in an earliest release date of June 2014 and maximum discharge date of June 2039.

Several relatives came forward to plan for M. Rector, and Catholic Charities placed M. Rector with her paternal grandmother in December 2009.

The adjudication trial and initial disposition regarding M. Rector was held in January 2010. DHS Protective Services caseworker Jennifer Kemp testified to J. Estrada's failure to pay child support or comply with a court-structured reintegration plan for M. Beene and the trial court's dismissal of that plan; J. Estrada's assertion at the time of M. Rector's birth that she had been free of substances since 2006 but had used marijuana in December 2008 or January 2009; J. Estrada's past failure to complete substance abuse services other than unknown services she might have completed during her various incarcerations; J. Estrada's past unstable housing and unemployment and failure to complete past parent agency agreements due to frequent incarcerations; and her current incarceration for a minimum of five years. Kemp initially thought J. Estrada would be released from jail shortly after M. Rector's birth and stated her willingness to offer her a treatment plan despite the requirement that she file a termination petition when a parent had previous terminations due to chronic neglect, but Kemp later discovered J. Estrada's minimum sentence was five years. Kemp recommended termination of J. Estrada's parental rights to M. Rector because J. Estrada had been offered services "numerous times" but failed to comply with or benefit during her three other children's proceedings, and continued to engage in the same negative behaviors. The trial court adjudicated M. Rector to come within the jurisdiction of the court and proceeded directly to the initial disposition.

Catholic Charities foster care caseworker Anne Walberer testified that agency policy precluded preparation of a parent agency agreement for a parent sentenced to more than two years in prison, so she did not prepare an agreement for J. Estrada. Walberer recommended termination of J. Estrada's parental rights due to her inability to support or care for M. Rector for at least five years, noted several relatives had expressed interest in being involved in M. Rector's life, and stated it was in M. Rector's best interests to "establish a family and a bond so that she can grow and develop appropriately."

The trial court terminated J. Estrada's parental rights to M. Rector pursuant to MCL 712A.19b(3)(g) and (l), finding that J. Estrada had failed to complete M. Beene's reintegration plan and that her ability to provide income and housing for M. Rector was uncertain, particularly in light of frequent incarceration. It noted the outcome of J. Estrada's appeal of her criminal sentence was unknown, but even the minimum sentence she had expected under the guidelines was 29 months, which exceeded two years; the agency would not provide a parent agency

agreement if her sentence exceeded two years; and the family should not be required to wait that long for J. Estrada to become able to parent M. Rector. The trial court found J. Estrada's recent marijuana use significant with respect to her ability to raise a young child. The trial court also noted that her past terminations were indicative of her ability to parent a child. The trial court went on to hold that, based on the concern for permanency, it was in M. Rector's best interest to terminate J. Estrada's parental rights. The trial court further found that reasonable efforts had been made to prevent M. Rector's removal from the home or to rectify the conditions that caused the removal, and that reasonable efforts had been made to finalize a permanency plan. The trial court entered its written order of termination on January 28, 2010. J. Estrada now appeals.

## II. BEST INTERESTS DETERMINATION

### A. STANDARD OF REVIEW

J. Estrada does not contest the statutory grounds for termination of her parental rights, but argues that termination of parental rights was not in M. Rector's best interests. J. Estrada asserts that a juvenile guardianship is an alternate form of permanency approved by the Michigan Legislature under MCL 712A.19a(7)(c), which would have been in M. Rector's best interests instead of termination of J. Estrada's parental rights because M. Rector was placed with relatives willing to care for her until J. Estrada was released from prison.

Once the DHS has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is clearly in the child's best interests, then the trial court shall order termination of parental rights.<sup>2</sup> There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence available.<sup>3</sup> We review the trial court's decision regarding the child's best interests for clear error.<sup>4</sup>

### B. ANALYSIS

A juvenile guardianship is one form of alternate placement that a trial court may consider at a permanency planning hearing in lieu of ordering DHS to initiate termination proceedings.<sup>5</sup> However, a trial court is not required to conduct a permanency planning hearing until (1) there is a judicial determination that reasonable efforts to reunite the child and family are not required,<sup>6</sup>

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<sup>2</sup> MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000).

<sup>3</sup> *Trejo*, 462 Mich at 354.

<sup>4</sup> *Id.* at 356-357.

<sup>5</sup> MCL 712A.19a(7)(c).

<sup>6</sup> MCL 712A.19a(2). See also MCR 3.976(B)(1).

or (2) “if a child remains in foster care and parental rights to the child have not been terminated, . . . within 12 months after the child was removed from his or her home.”<sup>7</sup>

Here, DHS filed its petition for termination of J. Estrada’s parental rights on September 22, 2009. And following the preliminary hearing, the trial court entered an order, requiring that “[r]easonable efforts shall be made to preserve and reunify the family to make it possible for the child(ren) to safely return home.” The trial court ordered a trial scheduled for November 18, 2009. However, on November 18, 2009, the trial court adjourned the trial until January 15, 2010 so that J. Estrada could be present. As stated, it was then at the January 15, 2010 trial that the trial court found that reasonable efforts had been made to prevent M. Rector’s removal from the home or to rectify the conditions that caused the removal, and that reasonable efforts had been made to finalize a permanency plan. The trial court then immediately ordered the termination of J. Estrada’s parental rights to M. Rector.

Under these circumstances, the trial court did not err in failing to consider a juvenile guardianship. As stated, consideration of a juvenile guardianship is not appropriate until the trial court makes a determination that reasonable efforts are *not* required<sup>8</sup> or within 12 months after the child was removed from her home, where the child remains in foster care and parental rights to the child have not been terminated.<sup>9</sup> Neither of these circumstances occurred in this case. Instead, the trial court found that reasonable efforts had been made and that it was in M. Rector’s best interests to terminate J. Estrada’s parental rights at the initial disposition hearing, which occurred only four months after M. Rector was removed from the home.

Further, nothing in the law prohibits a trial court from terminating parental rights when it could alternatively place the child with relatives.<sup>10</sup> If it finds it in a child’s best interests, the trial court shall terminate parental rights.<sup>11</sup> In making its best interests decision in this case, the trial court acknowledged M. Rector’s placement with relatives, who J. Estrada asserted were willing to care for her until J. Estrada’s release. But the trial court then balanced that factor against the need of the child to have permanency. The trial court noted J. Estrada’s sentence might be reduced to 29 or 38 months, but stated it was not willing to wait even two years to afford M. Rector permanency. It noted that relatives might desire to adopt M. Rector, and J. Estrada’s parental rights must be terminated to allow adoption.

We therefore conclude that the trial court did not clearly err in finding termination of J. Estrada’s parental rights to be in M. Rector’s best interests. M. Rector was never in J. Estrada’s care and therefore not bonded to her. And, based on the evidence available at the time of the

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<sup>7</sup> MCL 712A.19a(1). See also MCR 3.976(B)(2).

<sup>8</sup> MCL 712A.19a(2). See also MCR 3.976(B)(1).

<sup>9</sup> MCL 712A.19a(1). See also MCR 3.976(B)(2).

<sup>10</sup> *In re Futch*, 144 Mich App 163, 170; 375 NW2d 375 (1984).

<sup>11</sup> MCL 712A.19b(5); *Trejo*, 462 Mich at 350.

hearing, J. Estrada's appeal had not been decided and her release date remained five years away. Additionally, J. Estrada's history indicated that, once released, she would likely neglect M. Rector, again engage in criminal activity, and possibly attempt to obtain custody of M. Rector in violation of a guardianship or seek dismissal of a guardianship, thereby subjecting M. Rector to the impermanence.

This Court has long held under the doctrine of anticipatory neglect that a parent's treatment of one child is probative of how she will treat another and that the trial court need not wait to exercise jurisdiction until a child with an abused or neglected sibling is also abused or neglected.<sup>12</sup> The evidence presented to the trial court showed J. Estrada had neglected all of her children for a significant length of time and was sentenced as a fourth habitual offender, indicating that her propensity to engage in criminal activity was not significantly deterred by incarceration. Given her age of 31, her poor judgment could not be attributed to youth. Given this evidence, the trial court did not clearly err in finding it in M. Rector's best interests to terminate J. Estrada's parental rights and afford her the permanency of adoption instead of a guardianship subject to future petitions for dismissal.

We affirm.

/s/ Donald S. Owens  
/s/ William C. Whitbeck  
/s/ Karen M. Fort Hood

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<sup>12</sup> *In re Powers*, 208 Mich App 582, 588-593; 528 NW2d 799 (1995).